

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 475

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Mark Boitano

AN ACT

RELATING TO CHARTER SCHOOLS; ALLOWING THE PUBLIC EDUCATION
DEPARTMENT TO BE A CHARTERING AUTHORITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-8B-1 NMSA 1978 (being Laws 1999,
Chapter 281, Section 1) is amended to read:

"22-8B-1. SHORT TITLE.--~~[Sections 1 through 15 of this
act]~~ Chapter 22, Article 8B NMSA 1978 may be cited as the "1999
Charter Schools Act"."

Section 2. Section 22-8B-2 NMSA 1978 (being Laws 1999,
Chapter 281, Section 2) is amended to read:

"22-8B-2. DEFINITIONS.--As used in the 1999 Charter
Schools Act:

A. "charter school" means a conversion school or
start-up school within a school district authorized by the

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~[local school board]~~ chartering authority to operate as a
2 charter school;

3 B. "conversion school" means an existing public
4 school within a school district authorized by the ~~[local school~~
5 ~~board]~~ chartering authority to become a charter school;

6 C. "governing body" means the governing structure
7 of a charter school as set forth in the school's charter; ~~[and]~~

8 D. "start-up school" means a public school
9 developed by one or more parents, teachers or community members
10 authorized by the ~~[local school board of the school district in~~
11 ~~which the school is located]~~ chartering authority to become a
12 charter school; and

13 E. "chartering authority" means either a local
14 school board or the department that approves the establishment
15 of a charter school."

16 Section 3. Section 22-8B-4 NMSA 1978 (being Laws 1999,
17 Chapter 281, Section 4, as amended) is amended to read:

18 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
19 OPERATION.--

20 A. A charter school shall be subject to all federal
21 and state laws and constitutional provisions prohibiting
22 discrimination on the basis of disability, race, creed, color,
23 gender, national origin, religion, ancestry or need for special
24 education services.

25 B. A charter school shall be administered and

.150110.2

underscored material = new
[bracketed material] = delete

1 governed by a governing body in the manner set forth in the
2 charter.

3 C. A charter school shall be responsible for its
4 own operation, including preparation of a budget, contracting
5 for services and personnel matters.

6 D. A charter school may negotiate or contract with
7 a school district, a university or college or any third party
8 for the use of a facility, its operation and maintenance and
9 the provision of any service or activity that the charter
10 school is required to perform in order to carry out the
11 educational program described in its charter.

12 E. In no event shall a charter school be required
13 to pay rent for space that is deemed available, as negotiated
14 by contract, in school district facilities; provided that the
15 facilities can be made available at no cost to the school
16 district. All costs for the operation and maintenance of the
17 facilities used by the charter school shall be subject to
18 negotiation between the charter school and the school district.

19 F. A charter school shall negotiate with a school
20 district to provide transportation to students eligible for
21 transportation under the provisions of the Public School Code.
22 The school district, in conjunction with the charter school,
23 may establish a limit for student transportation to and from
24 the charter school site not to extend beyond the school
25 district boundary.

.150110.2

underscored material = new
[bracketed material] = delete

1 G. A charter school may negotiate with a school
2 district for capital expenditures.

3 H. A charter school shall be a nonsectarian,
4 nonreligious and non-home-based public school that operates
5 within a school district.

6 I. Except as otherwise provided in the Public
7 School Code, a charter school shall not charge tuition or have
8 admission requirements.

9 J. A charter school shall be subject to the
10 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
11 Accountability Act.

12 K. A charter school may acquire and dispose of
13 property; provided that, upon termination of the charter, all
14 assets of the charter school shall revert to the local school
15 board [~~that authorized the charter~~] in which the charter school
16 was located.

17 L. A charter school may accept or reject any
18 charitable gift, grant, devise or bequest; provided that no
19 such gift, grant, devise or bequest shall be accepted if
20 subject to any condition contrary to law or to the terms of the
21 charter. The particular gift, grant, devise or bequest shall
22 be considered an asset of the charter school to which it is
23 given.

24 M. A charter school may contract and sue and be
25 sued. A [~~local school board that approves a charter school~~]

.150110.2

underscored material = new
[bracketed material] = delete

1 chartering authority shall not be liable for any acts or
2 omissions of the charter school.

3 N. A charter school shall comply with all state and
4 federal health and safety requirements applicable to public
5 schools."

6 Section 4. Section 22-8B-5 NMSA 1978 (being Laws 1999,
7 Chapter 281, Section 5) is amended to read:

8 "22-8B-5. CHARTER SCHOOLS--~~[LOCAL SCHOOL BOARD~~
9 ~~AUTHORITY--STATE BOARD]~~ CHARTERING AUTHORITY--

10 A. If the local school board is the chartering
11 authority, it may waive only locally imposed school district
12 requirements.

13 B. If the department is the chartering authority,
14 it may waive locally imposed school district requirements of
15 the school district in which the charter school is located.

16 The ~~[state board]~~ department shall waive requirements relating
17 to individual class load and teaching load, length of the
18 school day, staffing patterns, subject areas and the purchase
19 of instructional material. The ~~[state board]~~ department may
20 waive ~~[state board]~~ department requirements or rules and
21 provisions of the Public School Code pertaining to graduation
22 requirements, evaluation standards for school personnel, school
23 principal duties and driver education. Any waivers granted
24 pursuant to this section shall be for the term of the charter
25 granted.

.150110.2

underscored material = new
[bracketed material] = delete

1 C. A charter school shall be a public school,
2 accredited by the [~~state board~~] department and shall be
3 accountable to the [~~school district's local school board~~]
4 chartering authority for purposes of ensuring compliance with
5 applicable laws, rules and charter provisions.

6 D. No local school board shall require any employee
7 of the school district to be employed in a charter school.

8 E. No local school board shall require any student
9 residing within the geographic boundary of its district to
10 enroll in a charter school.

11 F. A student who is suspended or expelled from a
12 charter school shall be deemed to be suspended or expelled from
13 the school district in which the student resides."

14 Section 5. Section 22-8B-6 NMSA 1978 (being Laws 1999,
15 Chapter 281, Section 6) is amended to read:

16 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
17 PROCESS--AUTHORIZATION.--

18 A. [~~The local school board~~] A chartering authority
19 shall have the authority to approve the establishment of a
20 charter school within the [~~local~~] school district in which it
21 is located.

22 B. A charter school applicant shall apply to a
23 [~~local school board~~] chartering authority for a charter. An
24 applicant shall only submit an application [~~in the district in~~
25 ~~which the school is located~~] to the chartering authority.

.150110.2

underscored material = new
[bracketed material] = delete

1 Applications shall be submitted by October 1 to be eligible for
2 consideration for the following school year. The October 1
3 deadline may be waived upon agreement of the applicant and the
4 [~~local school board~~] chartering authority.

5 C. An application for a start-up school may be made
6 by one or more teachers, parents or community members.

7 D. An application for a conversion school shall
8 include a petition of support signed by not less than sixty-
9 five percent of the employees in the school. Additionally, a
10 petition in support of the charter school signed by a majority
11 of the households whose children are enrolled in a proposed
12 conversion school [~~must~~] shall accompany the application.

13 E. The [~~local school board~~] chartering authority
14 shall receive and review all applications for charter schools.
15 The [~~local school board~~] chartering authority shall not charge
16 application fees. If the [~~board~~] chartering authority finds
17 [~~the~~] that a charter school application is incomplete, the
18 [~~board~~] chartering authority shall request the necessary
19 information from the charter applicant.

20 F. The [~~local school board~~] chartering authority
21 shall hold at least one meeting to obtain information and
22 community input to assist [~~the local school board~~] it in its
23 decision whether to grant a charter school application. The
24 [~~local school board~~] chartering authority shall rule on the
25 application for a charter school in a public meeting within

underscored material = new
[bracketed material] = delete

1 sixty days after receiving the application. If a local school
2 board that is acting as a chartering authority has not ruled
3 upon an application within sixty days, the charter application
4 will be automatically reviewed by the [~~state board~~] department
5 in accordance with the provisions of Section [~~7 of the 1999~~
6 ~~Charter Schools Act~~] 22-8B-7 NMSA 1978. The charter applicant
7 and the [~~local school board~~] chartering authority may, however,
8 jointly waive the deadlines set forth in this section.

9 G. If [~~the~~] a local school board denies a charter
10 school application or imposes conditions that are unacceptable
11 to the charter applicant, the charter applicant may appeal the
12 decision to the [~~state board~~] department pursuant to Section [~~7~~
13 ~~of the 1999 Charter Schools Act~~] 22-8B-7 NMSA 1978.

14 H. If a [~~local school board~~] chartering authority
15 denies a charter school application, it shall state its reasons
16 for the denial. If a local school board grants a charter, it
17 shall send a copy of the approved charter to the department [~~of~~
18 ~~education~~] within fifteen days after granting the charter."

19 Section 6. Section 22-8B-7 NMSA 1978 (being Laws 1999,
20 Chapter 281, Section 7) is amended to read:

21 "22-8B-7. CHARTER SCHOOL APPLICATION APPEAL--
22 PROCEDURES.--

23 A. The [~~state board~~] department, upon receipt of a
24 notice of appeal or upon its own motion, shall review decisions
25 of any local school board concerning charter schools in

.150110.2

underscored material = new
[bracketed material] = delete

1 accordance with the provisions of this section.

2 B. A charter applicant or governing body of a
3 charter school that wishes to appeal a decision of a local
4 school board concerning the denial, nonrenewal or revocation of
5 a charter school or the imposition of conditions that are
6 unacceptable to the charter school or charter school applicant
7 shall provide the [~~state board~~] department with a notice of
8 appeal within thirty days after the local school board's
9 decision. The charter school applicant or governing body of
10 the charter school bringing the appeal shall limit the grounds
11 of the appeal to the grounds for denial, nonrenewal or
12 revocation specified by the local school board. The notice
13 shall include a brief statement of the reasons the charter
14 school applicant contends the local school board's decision was
15 in error. The appeal and review process shall be as follows:

16 (1) within sixty days after receipt of the
17 notice of appeal, the [~~state board~~] department, at a public
18 hearing that may be held in the school district in which the
19 proposed charter school has applied for a charter, shall review
20 the decision of the local school board and make its findings.
21 If the [~~state board~~] department finds that the local school
22 board's decision was contrary to the best interests of the
23 students, school district or community, the [~~state board~~]
24 department shall remand the decision to the local school board
25 with written instructions for approval of the charter. The

.150110.2

underscored material = new
[bracketed material] = delete

1 instructions shall include specific recommendations concerning
2 approval of the charter. The decision of the [~~state board~~]
3 department shall be final and not subject to appeal; and

4 (2) within thirty days following the remand of
5 a decision by the [~~state board~~] department, the local school
6 board, at a public hearing, shall approve the charter.

7 C. The [~~state board~~] department, on its own motion,
8 may review a local school board's decision to grant a charter.
9 Within sixty days after the making of a motion to review by the
10 [~~state board~~] department, the [~~board~~] department, at a public
11 hearing that may be held in the district in which the proposed
12 charter school has applied for a charter, shall review the
13 decision of the local school board and determine whether the
14 decision was arbitrary and capricious or whether the
15 establishment or operation of the proposed charter school
16 would:

17 (1) violate any federal or state laws
18 concerning civil rights;

19 (2) violate any court order;

20 (3) threaten the health and safety of students
21 within the school district; or

22 (4) violate the provisions of Section [~~11 of~~
23 ~~the 1999 Charter Schools Act~~] 22-8B-11 NMSA 1978, prescribing
24 the permissible number of charter schools.

25 D. If the [~~state board~~] department determines that

.150110.2

underscored material = new
[bracketed material] = delete

1 the charter would violate the provisions set forth in
2 Subsection C of this section, the [~~state board~~] department
3 shall remand the decision to the local school board with
4 instructions to deny the charter application. The [~~state~~
5 ~~board~~] department may extend the time lines established in this
6 section for good cause. The decision of the [~~state board~~]
7 department shall be final and not subject to appeal.

8 E. If the department is the chartering authority,
9 the charter school may appeal to an impartial hearing officer
10 appointed by the secretary. The appeal shall follow the
11 procedures provided in Subsection B of this section. The
12 decision of the hearing officer shall be final and not subject
13 to appeal."

14 Section 7. Section 22-8B-8 NMSA 1978 (being Laws 1999,
15 Chapter 281, Section 8) is amended to read:

16 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
17 school application, whether for a start-up school or a
18 conversion school, shall be a proposed agreement between the
19 [~~local school board~~] chartering authority and the charter
20 school and shall include:

- 21 A. the mission statement of the charter school;
22 B. the goals, objectives and student performance
23 standards to be achieved by the charter school;
24 C. a description of the charter school's
25 educational program, student performance standards and

.150110.2

underscored material = new
[bracketed material] = delete

1 curriculum that must meet or exceed the [~~state board of~~
2 ~~education's~~] department's educational standards and must be
3 designed to enable each student to achieve those standards;

4 D. a description of the way a charter school's
5 educational program will meet the individual needs of the
6 students, including those students determined to be at risk;

7 E. a description of the charter school's plan for
8 evaluating student performance, the types of assessments that
9 will be used to measure student progress toward achievement of
10 the state's standards and the school's student performance
11 standards, the time line for achievement of the standards and
12 the procedures for taking corrective action in the event that
13 student performance falls below the standards;

14 F. evidence that the plan for the charter school is
15 economically sound, including a proposed budget for the term of
16 the charter and a description of the manner in which the annual
17 audit of the financial and administrative operations of the
18 charter school is to be conducted;

19 G. evidence that the fiscal management of the
20 charter school complies with all applicable federal and state
21 laws and [~~regulations~~] rules relative to fiscal procedures;

22 H. evidence of a plan for the displacement of
23 students, teachers and other employees who will not attend or
24 be employed in the conversion school;

25 I. a description of the governing body and

.150110.2

underscored material = new
[bracketed material] = delete

1 operation of the charter school, including how the governing
2 body will be selected, the nature and extent of parental,
3 professional educator and community involvement in the
4 governance and operation of the school and the relationship
5 between the governing body and the chartering authority and the
6 local school board, including a dispute resolution process;

7 J. an explanation of the relationship that will
8 exist between the proposed charter school and its employees,
9 including evidence that the terms and conditions of employment
10 will be addressed with affected employees and their recognized
11 representatives, if any;

12 K. the employment and student discipline policies
13 of the proposed charter school;

14 L. an agreement between the charter school and the
15 [~~local school board~~] chartering authority regarding their
16 respective legal liability and applicable insurance coverage;

17 M. a description of how the charter school plans to
18 meet the transportation and food service needs of its students;

19 N. a description of the waivers that the charter
20 school is requesting from the local school board and the [~~state~~
21 ~~board~~] department and the charter school's plan for addressing
22 these waiver requests;

23 O. a description of the facilities the charter
24 school plans to use; and

25 P. any other information reasonably required by the

.150110.2

underscored material = new
[bracketed material] = delete

1 ~~[local school board]~~ chartering authority."

2 Section 8. Section 22-8B-9 NMSA 1978 (being Laws 1999,
3 Chapter 281, Section 9) is amended to read:

4 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES.--

5 A. An approved charter application shall be a
6 contract between the charter school and the ~~[local school~~
7 ~~board]~~ chartering authority.

8 B. The contract between the charter school and the
9 ~~[local school board]~~ chartering authority shall reflect all
10 agreements regarding the release of the charter school from
11 school district policies.

12 C. The contract between the charter school and the
13 ~~[local school board]~~ chartering authority shall reflect all
14 requests for release of the charter school from ~~[state board]~~
15 department rules or the Public School Code. Within ten days
16 after the contract is approved by the ~~[local school board]~~
17 chartering authority, any request for release from ~~[state~~
18 ~~board]~~ department rules or the Public School Code shall be
19 delivered ~~[by]~~ to the local school board ~~[to the state board]~~
20 and the department. If the ~~[state board]~~ department grants the
21 request, it shall notify the local school board and the charter
22 school of its decision. If the ~~[state board]~~ department denies
23 the request, it shall notify the local school board and the
24 charter school that the request is denied and specify the
25 reasons for denial.

.150110.2

underscored material = new
[bracketed material] = delete

1 D. Upon approval of the charter by the [~~local~~
2 ~~school board~~] chartering authority, the charter school shall be
3 waived from the Public School Code provisions relating to
4 individual class load and teaching load requirements, length of
5 school day, staffing patterns, subject areas and purchase of
6 instructional materials.

7 E. The charter school shall participate in the
8 public school insurance authority.

9 F. Any revision or amendment to the terms of the
10 contract may be made only with the approval of the [~~local~~
11 ~~school board~~] chartering authority and the governing body of
12 the charter school.

13 G. The charter shall include procedures agreed upon
14 by the charter school and the local school board for the
15 resolution of disputes between the charter school and the local
16 school board.

17 H. The charter shall include procedures that shall
18 be agreed upon by the charter school and the [~~local school~~
19 ~~board~~] chartering authority in the event that [~~such board~~] the
20 chartering authority determines that the charter shall be
21 revoked pursuant to the provisions of Section [~~12 of the 1999~~
22 ~~Charter Schools Act~~] 22-8B-12 NMSA 1978.

23 I. A charter school chartered by the department is
24 a public school of the school district in which it is located."

25 Section 9. Section 22-8B-11 NMSA 1978 (being Laws 1999,

.150110.2

underscored material = new
[bracketed material] = delete

1 Chapter 281, Section 11) is amended to read:

2 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER
3 ESTABLISHED.--~~[A. Local school boards shall authorize the~~
4 ~~approval of both conversion and start-up charter schools within~~
5 ~~their school districts.~~

6 B.] No more than fifteen start-up schools and five
7 conversion schools may be established per year statewide. The
8 number of charter school slots remaining in that year shall be
9 transferred to succeeding years up to a maximum of seventy-five
10 start-up schools and twenty-five conversion schools in any
11 five-year period. The ~~[state board]~~ department shall promptly
12 notify the local school board of each school district when the
13 limits set forth in this section have been reached."

14 Section 10. Section 22-8B-12 NMSA 1978 (being Laws 1999,
15 Chapter 281, Section 12) is amended to read:

16 "22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--
17 GROUNDS FOR NONRENEWAL OR REVOCATION.--

18 A. A charter school may be approved for an initial
19 term of five years. A charter may be renewed for successive
20 periods of ~~[five]~~ fifteen years each. Approvals of less than
21 ~~[five]~~ fifteen years ~~[can]~~ may be agreed to between the charter
22 school and the ~~[local school board]~~ chartering authority.

23 B. No later than ~~[January]~~ July 1 of the year
24 ~~[prior to the year]~~ in which the charter expires, the governing
25 body of a charter school may submit a renewal application to

underscored material = new
[bracketed material] = delete

1 the ~~[local school board]~~ chartering authority. The ~~[local~~
2 ~~school board]~~ chartering authority shall rule in a public
3 hearing on the renewal application no later than ~~[March]~~
4 September 1 of the year in which the charter expires, or on a
5 mutually ~~[agreed]~~ agreed-upon date.

6 C. A charter school renewal application submitted
7 to the ~~[local school board]~~ chartering authority shall contain:

8 (1) a report on the progress of the charter
9 school in achieving the goals, objectives, student performance
10 standards, ~~[state board]~~ department minimum educational
11 standards and other terms of the initial approved charter
12 application, including the accountability requirements set
13 forth in ~~[Section 22-1-6 NMSA 1978]~~ the Assessment
14 Accountability Act;

15 (2) a financial statement that discloses the
16 costs of administration, instruction and other spending
17 categories for the charter school that is understandable to the
18 general public, that will allow comparison of costs to other
19 schools or comparable organizations and that is in a format
20 required by the ~~[state board]~~ department;

21 (3) contents of the charter application set
22 forth in Section ~~[8 of the 1999 Charter Schools Act]~~ 22-8B-8
23 NMSA 1978;

24 (4) a petition in support of the charter
25 school renewing its charter status signed by not less than

.150110.2

underscored material = new
[bracketed material] = delete

1 sixty-five percent of the employees in the charter school; and

2 (5) a petition in support of the charter
3 school renewing its charter status signed by a majority of the
4 households whose children are enrolled in the charter school.

5 D. A charter may be revoked or not be renewed by
6 the [~~local school board~~] chartering authority if [~~the board~~] it
7 determines that the charter school did any of the following:

8 (1) committed a material violation of any of
9 the conditions, standards or procedures set forth in the
10 charter;

11 (2) failed to meet or make substantial
12 progress toward achievement of the [~~state board~~] department
13 minimum educational standards or student performance standards
14 identified in the charter application;

15 (3) failed to meet generally accepted
16 standards of fiscal management; or

17 (4) violated any provision of law from which
18 the charter school was not specifically exempted.

19 E. If a [~~local school board~~] chartering authority
20 revokes or does not renew a charter, the [~~local school board~~]
21 chartering authority shall state in writing its reasons for the
22 revocation or nonrenewal.

23 F. A decision by a local school board to revoke or
24 not to renew a charter may be appealed by the governing body of
25 the charter school pursuant to Section [~~7 of the 1999 Charter~~

.150110.2

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

~~Schools Act~~] 22-8B-7 NMSA 1978."

- 19 -

.150110.2